

REMARKS

Attached herewith is an Excess Claims Fee letter and fee for one excess total claim.

Claims 1-24 are all the claims presently pending in the application. New dependent claim 24 is added for the limitation that is deleted from independent claim 1, since Applicants believe that the "kernel image" limitation of independent claim 1 distinguishes from Richard without having to include the additional feature involving the plurality of selectable destinations.

It is noted that Applicants specifically state that no amendment to any claim herein should be construed as a disclaimer of any interest in or right to an equivalent of any element or feature of the amended claim.

Claims 2, 3, 9, 11, and 13 stand rejected under 35 U.S.C. § 112, first paragraph, as allegedly failing the written description requirement.

Claims 1-23 stand rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over U.S. Patent Publication No. US 2001/0056425 to Richard, further in view of US Patent Publication No. US 2002/0049950 to Loaiza et al.

These rejections are respectfully traversed in the following discussion.

I. THE CLAIMED INVENTION

As described and defined in, for example, independent claim 1, the claimed invention is directed to a backup system for backing up a hard disk of a computer which is connected to a server via a network. The server includes a boot OS creation section adapted to create a boot OS for only the computer.

A backup section is adapted to store as a file the contents of the hard disk, inclusive of a system region, in the computer into a designated backup destination regardless of a type of an OS installed and a type of a file system.

A management information database is adapted to store therein management information of the computer. A kernel image is adapted to serve for the creation of the boot OS upon receiving a kernel parameter from the computer.

Thus, the present invention relates to a backup system capable of easily performing backup into a designate backup destination and optionally restore operation of an entire HD, inclusive of the system region, and regardless of the type of OS installed thereon.

Conventionally, as explained on page 1 of the specification, when the contents of the

system region of a hard disk on a computer is backed up, it is impossible to perfectly store the system region because this region may often be updated even during the backup operation. Also, since the capacity of a backup destination must be checked at all times during the backup operation and because there is the possibility the content of the current hard disk is destroyed, it is difficult for a general user to backup the entire region of the hard disk.

The claimed invention, on the other hand, provides a backup system capable of easily executing or performing backup and/or restore operations of the entire hard disk, inclusive of the system region and regardless of the type of OS installed.

II. THE 35 USC §112 REJECTIONS

The Examiner alleges that claims 2, 3, 11, and 13 contain wording not described in the specification, indicating the applicant failed to have possession of the claimed inventions at the time of the filing. The Examiner considers that it is “... *not clear whether applicant means to replace the existing hard disk in said computer or replacing it altogether.*”

Applicants submit that the claim revision was intended to clarify that the expression of the original claim language (e.g., “... the same hard drive in said computer ...”) was not intended to be construed to mean only the original hard drive hardware component of the backed-up computer. That is, the original claim wording is intended to refer to the hard drive system component of the computer architecture of the backed-up computer. It was not intended to be limited to the actual hardware component used in that architectural functional position.

Thus, Applicant revised the claim wording to preclude possible interpretation that the restoration of contents for the “same hard drive” is limited in the claim to restoring the contents on the same piece of hardware used as the hard drive of the backed-up computer, since restoration of hard drive contents is commonly due a hard drive hardware component failure that requires a new piece of hardware be installed to be “... the same hard drive in said computer.”

This requirement to restore hard drive contents when a disk crashes is well known in the art, as evidenced by the description in paragraph [0002] of primary reference Richard: “*When a hard disk drive suffers a breakdown and needs to be replaced, the user is compelled to enter into a laborious procedure for the purpose of re-establishing the configuration of his machine. He generally has to partition*”

However, in an effort to expedite prosecution, Applicant has amended the claims to

refer to simply restoring a disk in the same computer, intending that it be irrelevant whether the disk restored is the original disk that was backed up and restored because of a corrupt file or a new replacement disk necessary because the original disk failed and had to be replaced.

Relative to the rejection for claim 9, Applicants believe that the revised wording of the claim amendments above appropriately addresses the Examiner's concern, as best understood.

Given the above clarifications, Applicants respectfully request that the Examiner reconsider and withdraw these rejections.

III. THE PRIOR ART REJECTION

The Examiner alleges that Richard, when modified by newly-cited Loaiza, renders obvious the claimed invention described in claims 1-23. Applicants submit, however, that secondary reference Loaiza does not overcome the deficiencies of Richard even if it were to be used in combination with Richard.

To begin with, Applicants point out that the rejection currently of record for independent claim 1 fails to reasonably address the limitation describing the kernel image that permits the creation of the boot OS based upon only receiving one or more kernel parameters associated with the type of OS installed on the computer being backed up.

That is, the present invention stores images of kernels of various OS types in the server so that this module need only receive one or more parameters identifying the OS type in order to recreate the OS to be restored and does not have to receive each OS file from the computer.

In contrast, Richard is understood from the description in paragraphs [0053] and [0054] to have to transmit all of the OS files from the backed-up computer and does not utilize this aspect of the present invention of using a kernel image. The Examiner points to the description in paragraphs [0068]-[0070]. However, this description relates only to the resultant reassembly of the OS components and does not suggest the feature of using a stored kernel image that permits the reconstruction of the OS in the computer without having to store all the OS files from the computer being backed up.

Hence, turning to the clear language of the claims, in Richard there is no teaching or suggestion of: "...a kernel image adapted to serve for the creation of said boot OS based on one or more kernel parameters identifying said OS installed on said computer...", as required by independent claim 1. Independent claims 3 and 12 have similar language.

Relative to the aspect of the present invention involving the “plurality of potential backup destinations as selected by a user”, which limitation has been moved from independent claim to become new dependent claim 24, the Examiner reasonably concedes that primary reference Richard fails to teach or suggest the method of backing up a computer hard drive by selectively using one of a plurality of possible backup destinations.

To overcome this deficiency, the Examiner relies upon paragraph [0068] of secondary reference Loaiza, indicating that the motivation to modify primary reference Richard would have been “... *because it would provide a wide variety of backup mechanism and medium.*”

However, Applicants respectfully submit that this motivation is merely a circular argument. That is, the Examiner merely alleges that one of ordinary skill in the art would have modified Richard because such modification would have provided the benefit of having made the modification. Applicants submit that such circular reasoning does not provide a reasonable suggestion from the prior art and is indication of improper hindsight.

Moreover, Applicants respectfully submit that, even if Richard were to be modified to incorporate the data integrity verification mechanism of Loaiza, this modification fails to satisfy the plain meaning of the claim language.

That is, Applicants submit that paragraph [0068] of Loaiza may suggest different types of backup components but this is an entirely different concept from that of being able to select a destination for backup from among a plurality of different potential destinations. The wording in Loaiza does not reasonably suggest making a selection from different potential destinations.

As shown in Figure 17 of the present application, the user of the claimed invention can actually select one of several potential backup destinations. Richard clearly fails to show this type of feature.

Hence, turning to the clear language of the claims, in Richard, even if modified by Loaiza, there is no teaching or suggestion of: “... said designated backup destination selectively comprising any of a plurality of potential backup destinations”, as required by new dependent claim 24, but which feature is also included as a limitation in various independent claims.

Claims 3, 9, 11, and 12 have similar language.

Moreover, as indicated in dependent claim 2 (as well as independent claim 3), the present invention includes the capability to permit the recovery to be executed in a manner other than using a recovery CD locally. That is, the server of the present invention includes

the ability to "...restore the content of said hard disk into a hard disk in said computer or into a hard disk of another computer by using the file which has been stored as a file by said backup section and by transmitting the file via a network directly to said computer or said another computer." This remote restore capability via downloading is not suggested in Richard, since the cited wording in paragraphs [0078] – [0081] of Richard refers only to the use of booting locally using a CDROM, not a downloading from the server directly to the computer to be restored.

Claims 3 and 11 have similar language.

Relative to the rejection for claims 7 and 19, the Examiner is respectfully requested to provide a reasonable reference demonstrating the position of inherency of padding values for backing up a hard drive.

Relative to the rejection for claim 10, Applicants respectfully submit that the description in paragraphs [0083] and [0088] does not reasonably relate to the claim language that requires restoring service to another computer.

Relative to the rejection for claims 14 and 15, since Richard does not use a mechanism based on a kernel image, the plain meaning of the language of these claims are clearly not satisfied.

Relative to the rejection for recently-added dependent claim 22 that describes the capability to select either a network backup style or a local backup style, the Examiner reasonably points to description in paragraph [0009] for satisfying the network backup style. However, the description in paragraph [0003] of Richard, upon which the Examiner relies for the local backup style is not a part of the system of Richard, since this paragraph clearly describes a conventional standalone mechanism. Thus, Richard's method does not teach or suggest being able to select either a remote or local style. Indeed, Richard makes no suggestion to even have alternative backup destinations at all, as the Examiner concedes. This feature of the present invention is clearly shown in the GUI interface shown in Figure 14 of the present application, and Richard clearly fails to demonstrate such selection capability.

Relative to the rejection for recently-added dependent claim 23 that describes designating the backup destination as being the restore origin, exemplarily shown in Figure 17 of the present application, the Examiner points to description in paragraphs [0067] through [0070]. However, this description is merely the description of the preparation of the CDROM used for the restoration and does not satisfy the plain meaning of the claim language that requires both a designation of a backup destination and a designation of a

restore origin. Since Richard fails to have a designation of a destination, it inherently has no designation of a restore origin. This feature is shown in the present application in Figures 17 and 21. Richard has nothing similar to the feature of designating either a destination or a source described by this claim.

Therefore, Applicants submit that there are elements of the claimed invention that are not taught or suggest by Richard, even if modified by Loaiza, and the Examiner is respectfully requested to withdraw this rejection.

IV. FORMAL MATTERS AND CONCLUSION

In view of the foregoing, Applicant submits that claims 1-24, all the claims presently pending in the application, are patentably distinct over the prior art of record and are in condition for allowance. The Examiner is respectfully requested to pass the above application to issue at the earliest possible time.

Should the Examiner find the application to be other than in condition for allowance, the Examiner is requested to contact the undersigned at the local telephone number listed below to discuss any other changes deemed necessary in a telephonic or personal interview.

The Commissioner is hereby authorized to charge any deficiency in fees or to credit any overpayment in fees to Attorney's Deposit Account No. 50-0481.

Respectfully Submitted,

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Frederick E. Cooperrider
Registration No. 36,769
Sean M. McGinn
Registration No. 34,386

McGinn Intellectual Property Law Group, PLLC
8321 Old Courthouse Road, Suite 200
Vienna, VA 22182-3817
(703) 761-4100
Customer No. 21254